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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:

Amendment of Section 73.202(b).
Table of Allotments
FM Broadcast Stations
(Hawthorne, Wisconsin and "Counter-Proposed" Superior, Wisconsin)

RM-9105
MM Docket No. 97-180

John A. Karousos
Chief, Allocations Bureau
Policy and Rules Division
Mass Media Bureau

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To the Commission:

**COMMENTS AND COUNTER-PROPOSAL TO ASSIGN A NEW F M STATION AT
HAWTHORNE, WISCONSIN**

Comes now, WTRW, Incorporated, licensee of Standard Broadcast Station WTRW-AM, Two Rivers, Wisconsin, (hereinafter "WTRW") by its' President Mark Heller, with comments to the petition for rulemaking to assign a new FM channel at Hawthorne, WI, by Bruce Elving of Esko, Minnesota as that unincorporated area's first aural service and WTRW's Counter-Proposal to assign same to Superior, Wisconsin, WTRW is responding in a timely manner, as detailed in FCC Report Notice of Proposed Rule Making, released August 15, 1997.

Hawthorne, Wisconsin is an unincorporated village, with approximately 100 inhabitants. The Town of Hawthorne, Wisconsin has a total population of 1,049 residents.

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While the Town of Hawthorne, has it's own Zip Code and Post Office, it relies upon the cities of Superior, Wisconsin and Duluth, Minnesota for hospital care and library service. The Town of Hawthorne is served by a Constable, and does not provide full-time police protection but relies on the Douglas County Sheriff's Department for the Public's Safety. Likewise, the Town of Hawthorne is protected by a volunteer fire department made up of volunteer residents who serve their neighbors.

Superior, Wisconsin, the counter-proposed community, is an established city, has it's own Zip Code and Post Office, and Elementary School, a High School, a University, Churches, Police and Fire protection, an airport, various Civic Organizations including a Lions Club, a Rotary Club, a Kiwanis Club and a Chamber of Commerce and is a vibrant community with 27,134 inhabitants. Therefore, petitioner states that Superior qualifies as a "community" for allotment purposes, citing Beech Mountain, North Carolina, 6 FCC Rcd 5835 (1991). It is located in Douglas County, and it's major employers are the iron ore and lumber trades. It currently has one commercial FM radio service and one non-commercial FM service allocated to its' city. There is no known "major employer" if any, in the unincorporated area of Hawthorne, Wisconsin.

Whereas, Section 307(b) of the Commission's Rules directs that "(e)very community of 'appreciable size' ... is presumed by the Commission to need at least one radio station for local self-expression." Ruarch Associates, 56 RR 2d 1593, para 2 (Rev. Bd. 1984) aff'd, 101 FCC 2d 1358 (1985) (emphasis added). Where a "transmission service disparity already exists, a different presumption applies, namely that the community which has no transmission service has a greater need than the community that already has one (or more)." Id. @ para 5. (emphasis added). However, these are rebuttable presumptions, and the Commission has refused to give very small communities a dispositive Section 307(b) presumption in a multiple party

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proceeding. Reeder v. FCC, 865 F.2d 1298 (D.C. Cir. 1989).⁷

Superior, with a population of 27,134 residents, outweighs the needs of the 100 persons at Hawthorne. The unincorporated area of Hawthorne's need for a first aural service does not in fact, warrant a dispositive Section 307(b) preference over the third FM service as counter-proposed to Superior, Wisconsin. Since the only commercial FM licensed to Superior is owned by a licensee who also controls a television signal in the Superior market, the Commission by granting the allocation to Superior will allow an independent voice to serve that community, and WTRW would enthusiastically apply for a construction permit for an FM station at Superior, if an allocation were made available.

Moreover, the Superior proposal presents a more efficient use of the broadcast spectrum because it will have the potential to serve substantially more area and population than the Hawthorne proposal, which is restricted to a site 3.3 miles west.

<u>Community:</u>	<u>Existing:</u>	<u>Proposed:</u>	<u>Counter-Proposed</u>
Superior, WI	217C1, 273C	217C1, 273C	217C1, 273C, 293A
Hawthorne, WI	None	293A	None

The Hawthorne proposal should be dropped, without unduly impeding the fair, efficient and equitable distribution of radio service. The Counter-Proposal to allocate Superior, Wisconsin its third FM radio service serves the Public's interest and needs.

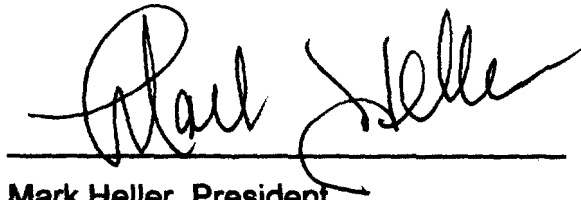
⁷ Cf. FM Channel Assignments, 51 RR 2d 25, 29 (1983) (favoring a second assignment to a larger community over a first assignment to a very small community is consistent with the Commission's mandate to assign frequencies in a fair and efficient manner.

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Therefore, WTRW respectfully requests, in light of the above mentioned prior case law, that the Commission amend it's FM table of allotments to allot Channel 293A to Superior, Wisconsin at the coordinates previously proposed for Hawthorne, Wisconsin will provide a 100% city-grade signal over the City of Superior, Wisconsin, and that if such window of opportunity exists to apply for same, WTRW will apply for same.

I hereby certify, that I have read this entire document, and to the best of my knowledge, information and belief, that the foregoing statement is true and correct, that there is good and sufficient reason to support same, and that it is not submitted for delay.

Respectfully submitted,



Mark Heller, President

WTRW, Incorporated

1414 16th Street

Two Rivers, WI 54241-3031

(414) 794-1800

August 18, 1997.

(seal)

Subscribed and Sworn Before Me this 18 day of August, 1997.



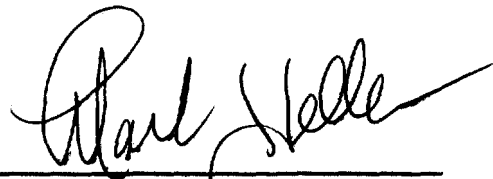
Notary Public. My commission expires

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CERTIFICATE OF SERVICE

I, Mark Heller, hereby certify that on the 18th day of August, 1997, I served a copy of the foregoing "COMMENTS AND COUNTER-PROPOSAL TO ASSIGN A NEW F.M. STATION AT HAWTHORNE, WISCONSIN" by first class United States mail, postage prepaid, upon the following:

Mr. Bruce F. Elving
P.O. Box 336
Esko, MN 55733-0336



Mark Heller